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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 January 1998]

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1. The International Federation of Human Rights Leagues (FIDH) and the Asociación Pro Derechos Humanos (APRODEH), its member organization in Peru, are concerned at the situation with regard to the administracion of justice in Peru.

The administration of justice

2. The judiciary and the Public Prosecutor's Office are neither independent nor autonomous, since they are placed under the direction of executive committees with powers that, according to the Constitution, they themselves should exercise. There are also restrictions on the ability of the President of the Supreme Court to carry out his duties.

3. In the course of its work, the Executive Committee of the Judiciary has encroached on others' jurisdictions: it has removed magistrates on highly dubious grounds, disregarded applicable legal provisions and undermined judicial guarantees. In addition, the composition of divisions and courts has been altered with the clear intention of influencing their decisions.

4. The military authorities continue to try cases of human rights violations committed by members of the military and/or the police force, but have not observed decisions adopted by the civil judiciary. Members of the Lima Public Law Division who ordered the enforcement of judicial guarantees became the subject of judicial investigation for allegedly interfering in the decisions of military courts.

5. Lastly, Law No. 26898 has been enacted, which gives temporary magistrates the same status as members of the judiciary and the Public Prosecutor's Office and authorizes the Executive Committee of the Judiciary to appoint additional temporary magistrates. Under this law, temporary magistrates have the same prerogatives as full members of the judiciary without being full members, for as long as they hold the position. That is to say, they have the same rights, powers, duties, constraints and inconsistencies as full members of the judiciary, but they do not have the right to irremovability or guaranteed tenure, which means that they can be transferred or dismissed by decision of the Executive Committee.

6. This rule is particularly important as two out of the five members of the National Elections Tribunal (JNE) are appointed by the Public Prosecutor's Office and the judiciary, and the representative of the latter is ex officio President of the JNE. The terms of office of the representatives of these institutions on the JNE expire in 1998, along with that of the representative of the law faculties of the private universities.

7. The new JNE will be required to decide whether the incumbent President may stand for re-election in 2000. It is also likely to have to conduct a referendum called precisely with the aim of repealing the law allowing the President to be re-elected.

The Constitutional Court

8. Last May, three Constitutional Court magistrates were arbitrarily dismissed. Since then there has been no body to act as a constitutional watchdog in the country. Congress took the step as a reprisal after the

magistrates declared the law making it possible for Mr. Fujimori to be re-elected unconstitutional. Despite national and international protests, the measure was upheld and the Court now tries only cases involving the enforcement of judicial guarantees.

Anti-terrorist legislation

9. Despite the recommendations of international and regional human rights bodies, there has been no change in the substantive components of anti-terrorist legislation, which contravenes the minimum standards laid down in international treaties and continues to lead to the detention of innocent persons. For example, the terms in which offences are described are imprecise and the penalties disproportionate, the offence of aggravated terrorism is incorrectly defined, and excessive powers are granted to the police force; civilians continue to be tried by the military courts and a special restrictive regime continues to be applied in prisons.

10. Not until October 1997 was the system of "faceless judges" abolished, even though terrorist crimes must be tried by a Special Court within a maximum of 15 days. As a result, such trials do not respect the required safeguards and turn into truly "summary" trials.

11. The pressure to solve the problem of the detention of innocent persons gave rise to what is known as the Ad Hoc Committee, which proposes that such detainees be pardoned after a thorough review of their cases. Although it is not legally proper to grant a pardon to someone who has committed no offence, this mechanism has constituted one more instrument for obtaining the release of the 361 innocent persons detained to date. Despite their release, however, the anti-terrorist legislation continues to affect them: the pardon has not wiped their judicial or police records clean, and this prevents them from finding work; and no innocent party has received reparation of any kind from the State.

12. At the same time, warrants are out for thousands of people, living mainly in mountain and forest regions, who are wanted for terrorist offences. These people were actually forced to collaborate with subversive groups and were included in the judicial proceedings despite the fact that they had participated against their will.

Torture

13. Two facts in particular attest to the seriousness of this problem: the practice of torture is now more generalized and widespread, even in connection with common offences; and it is still not defined as an offence - indeed, despite the existence of a number of bills on torture, it is not even on the agenda in Congress. As a result, on the few occasions when torturers have been prosecuted, they have been charged with assault or abuse of authority, given lenient sentences and ordered to pay minimal compensation.

14. Mariela Barreto and Leonor La Rosa, former agents of the Army Intelligence Service (SIE), were tortured by their own colleagues on suspicion of having leaked information to the press. Mariela Barreto died and was dismembered, while Leonor La Rosa was left virtually disabled. In her

testimony, Leonor La Rosa maintained that persons accused of terrorism were subjected to torture in the SIE basement. She also confirmed that torture took place. According to a survey by human rights organizations, 77 per cent of the inmates of high security prisons had undergone some kind of ill-treatment or torture during the police investigation.

15. The practice of torture appears to be a more serious problem in areas under a state of emergency, and sexual violence is frequently used against women in detention.

Legislation on amnesty and impunity

16. Since June 1995, when Laws Nos. 26479 and 26492 granted total amnesty to those who had violated human rights between 1980 and 1995, impunity has been on the increase in Peru, thereby encouraging further human rights violations. In the face of national and international condemnation, the Constitutional Court upheld the legislation on the grounds that its consequences "had run their course"; and dismissed the complaint of unconstitutionality.

17. The victims of human rights violations have no protection whatsoever. The Government has not legislated in any way for their full reparation, despite the express recommendation of the Human Rights Committee that it should remedy the consequences of the amnesty laws (see document CCPR/C/79/Add.67, para. 20).

Prison conditions; inmates' regime; situation in Challapalca Prison.

18. The basic health rights of prisoners - of whom 69.6 per cent are awaiting trial and 30.4 per cent have been convicted - are not respected, and they receive an allowance of US$0.70 per day for food.

19. A special regime has been introduced for "recalcitrant" prisoners in order to "safeguard the principle of authority and national security", with an initial period of isolation when prisoners' social contacts and freedoms are reduced to a minimum. Under this regime, prisoners have been transferred to Challapalca Prison (between the Departments of Tacna and Puno), which is considered a "punishment prison" since conditions there are below the minimum for human survival. It is 4,600 metres up, with temperatures below 0° C. During the night of 8 August and the early hours of 9 August, 49 prisoners were transferred there from Lima, having previously been confined in Yanamayo and La Capilla prisons in the towns of Puno and Juliaca respectively.

20. After objections from the Office of the People's Advocate, a delegation from the National Human Rights Commission was refused entry to the prison on 2 July 1997, as were lawyers from human rights organizations on 16 September 1997.

21. Those in prison for terrorism or treason - a total of 3,515 persons - are also subjected to an inhumane regime. Under Decree Law No. 25475, they must serve their sentence in a maximum security prison, in solitary confinement for the first year and with forced labour from the second year until their release. Before June 1997, they received only one 30-minute visit per month from two members of the immediate family, and they are now permitted

one one-hour visit per week from three members of the family. However, in many cases this is impractical owing to the distance between the family home and the prison. The prisoners should therefore be transferred to a prison located where their families live. Furthermore, they only have one half-hour of sunlight per day. The regime being applied to them is the one for "recalcitrant" prisoners, which contravenes the United Nations Standard Minimum Rules for the Treatment of Prisoners, and indeed Decree Law No. 25475 itself, which lays down a maximum period of solitary confinement of one year.

22. The situation with regard to minors in prison continues to give cause for concern. In contravention of various regulations, around 37 minors are imprisoned with adults and have no rehabilitation programmes.

23. FIDH and APRODEH request the Commission to give particular consideration to this situation.